IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 68 of 1996

Date of Decision: 13.9.2007

The Commissioner of Income-tax, Jalandhar

....Applicant

Versus

M/s Ludhiana Aggarwal Cooperative House Building Society Limited, Aggar Nagar, Ludhiana

...Respondent.

CORAM:- HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. Sanjiv Bansal, Advocate for the revenue.

Mr. S.K.Mukhi, Advocate for the assessee.

**AJAY KUMAR MITTAL, J.**

This reference under Section 256 (1) of the Income Tax Act, 1961 (for short "the Act") has been made to this Court at the instance of the revenue by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal") arising out of its order dated 11.7.1995 relating to the assessment years 1978-79 and 1979-80 referring the following question of law:-

> "Whether, on the facts and in the circumstances, the Tribunal was right in law in holding that the amount of

transfer fee in the hands of the assessee was exempt from income-tax on the principle of mutuality?"

The facts as noticed in the statement of case are that the assessee is a Cooperative Housing Society and filed its return showing nil income for the assessment years 1978-79 and 1979-80. The society allotted plots of land to its members and received certain charges. It has received transfer fee amounting to Rs.1,34,000/- in the assessment year 1978-79 and Rs.1,48,400/- in the assessment year 1979-80. The assessment for the year 1978-79 was completed on an income of Rs.1,34,625/- and in the next assessment year at Rs.1,52,150/-. The Assessing Officer treated the transfer fee as income of the Society. The interest income was exempted by the Assessing Officer under Section 80P (2)(a)(i) of the Act and the rental as well as the amount of transfer fee were brought to tax. The assessee filed an appeal before the CIT (A), who vide order dated 25.7.1990 dismissed the same holding that the income of the assessee is taxable in view of Section 28 of the Act. The assessee took the matter in appeal before the Tribunal and the Tribunal vide its order dated 11.7.1995 allowed the appeal and held that the income of transfer fee was not assessable to tax on the principle of mutuality.

The primary point which arises for consideration of this Court is whether the amount of transfer fee which had been received by the assessee-Cooperative House Building Society from its members was exempt from income tax by following the principle of mutuality.

It is undisputed that the respondent-assessee had received the transfer fee of Rs.1,34,000/- in the assessment year 1978-79 and

Rs.1,48,400/- in the next assessment year 1979-80 from its members.

The concept of mutuality is based on the principle that no one can make a profit out of himself. Mutuality implies that the members act for mutual benefit and there is element of reciprocity. The cardinal requirement for applying principle of mutuality is that the funds are collected and spent for the mutual benefit and the surplus is to be returned to the contributor where the contributors have complete control over the funds.

The doctrine of mutuality came up for consideration before the Apex Court in **Chelmsford Club v. Commissioner of Income-tax, (2000) 243 ITR 89**, wherein while following its earlier decision in **CIT v. Bankipur Club Ltd. 226 ITR 97**, it was observed thus:-

> "Under the Income-tax Act, what is taxed is the 'income, profits or gains' earned or 'arising', 'accruing' to a 'person'. Where a number of persons combine together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to those persons cannot be regarded in any sense as profit. There must be complete identity between the contributors and the participators. If these requirements are fulfilled, it is immaterial what particular form the association takes. Trading between persons associating together in this way does not give rise to profits which are chargeable to tax. Where the trade or activity is mutual, the fact that, as regards certain

activities, certain members only of the association take advantage of the facilities which it offers does not affect the mutuality of the enterprise."

The Apex Court further laid down the three essential conditions for the applicability of doctrine of mutuality. The same are summarized as under:-

"1. The identity of the contributors to the fund and the recipients from the fund.

2. The organisation exists only for mutual benefit.

3 The funds can be expended for mutual benefit or returned to the contributors."

Learned counsel for the assessee drew our attention to the decisions reported in **Commissioner of Income-tax v. Apsara Co-operative Housing Society Ltd., 204 ITR 662** and **Commissioner of Income Tax v. Adarsh Co-operative Housing Society Ltd., 213 ITR 677.**

In Apsara Co-operative Housing Society Ltd's case (supra), the Calcutta High Court was considering the case of an assessee, a Co-operative Housing Society which provided residential apartments to its members and received transfer fee on the transfer of flats. The transfer fee received by the society from a member when the member intended to transfer a flat to any other person, member or otherwise was meant for the benefit of the member of the society and not for business purposes, it was held that the members formed themselves into co-operative society for the purpose of having a Co-operative Housing Society and there was no question of any profit element in such an

association or in having a transfer fee. The assessee-Cooperative Housing Society being a mutual concern was not liable to tax on the transfer fee received by it.

Likewise, the assessee-Cooperative Society before the Gujarat High Court in Adarsh Co-operative Housing Society Ltd's case (supra) had acquired land and leased out the same to its members and certain amount was collected from the individual members when the lease deeds were executed. In appropriate cases, the society had permitted disposition or devolution of the lease of any plot with any building thereon under its regulation from any existing member to another who registered himself as a member of the society. The existing member to whom the plot was leased was required to pay to the society half of the premium amount if any received by him from the purchaser. The same was held not to be taxable as the amount contributed by the outgoing members was utilized by the society for extending common amenities to the members.

Now adverting to the facts of the present case, the Tribunal had found that the assessee was a Cooperative Housing Society registered under the Punjab Cooperative Societies Act, 1961 and it allotted plots of land to its members and recovered certain charges. The claim of the assessee that the society was functioning as a cooperative mutual society and whatever money was collected by way of transfer fee was utilized to provide various facilities to its residents/members as also for running the school, the hospital and the community centre and that the income earned by the society was used for the benefit of its members had been accepted and it was noticed

that there was no commercial or trading activity being carried on by the assessee-society. Still further, at the time of issue of receipt of the transfer fee, the object was clearly mentioned on the receipt and the same was utilized for the specific charitable purpose for the benefit of the members. Accordingly, the transfer fee paid by the members of the assessee-society cannot be said to be income of the assessee.

In all fairness to the learned counsel for the revenue, reference is made to **Haryana State Co-operative Labour and Construction Federation Ltd. v. Commissioner of Income-tax, 252 ITR 265** on which reliance has been placed by him. A Division Bench of this Court in that case after noticing the principles governing the doctrine of mutuality on facts observed that the assessee-Cooperative Society therein did not fulfill the essential ingredients for qualifying itself to be a mutual concern and, therefore, it could not invoke the principle of mutuality. That is not the position here and revenue cannot derive any benefit from the cited decision.

In view of the above, the question of law is answered in favour of the assessee and against the revenue. No costs.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**September 13, 2007** **( M.M. KUMAR )**
gbs **JUDGE**